

SMART BUILDINGS POLICY PROJECT

C/O ALTS  
SUITE 1200  
888 17<sup>TH</sup> STREET NW  
WASHINGTON, DC 20006

November 19, 2004

VIA ELECTRONIC SUBMISSION

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: **Ex Parte**  
**WC Docket No. 04-313; CC Docket Nos. 01-338, 96-98, and 98-147**

Dear Ms. Dortch:

The Smart Buildings Policy Project<sup>1</sup> ("SBPP") submits the following ex parte, which demonstrates that competitive telecommunications providers continue to face substantial barriers in obtaining access to multiunit premises to serve tenant customers. The continued existence of these barriers is a barrier to local entry, which the Federal Communications Commission ("FCC") recognized in its findings of impairment in the deployment of enterprise loops in the *Triennial Review Order* ("TRO").<sup>2</sup> It also supports a determination that the appropriate geographic market for determining impairment for high capacity loops is location-specific. Attached to this letter are declarations from individual providers attesting to these barriers.

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<sup>1</sup> The Smart Buildings Policy Project is a coalition of competitive telecommunications carriers, equipment manufacturers and organizations that support nondiscriminatory access by telecommunications carriers to multi-tenant premises.

<sup>2</sup> See TRO, paragraph 305 ("...[C]ompetitive LECs face additional barriers with regard to serving multiunit premises due to difficulties and sometimes outright prohibitions in gaining building access.") Also, See also TRO, paragraph 320 ("The inability to recover the significant fixed and sunk construction costs of DS3 loops, coupled with additional barriers to loop deployment associated with accessing rights-of-way; obtaining and paying for building access; and other service provisioning delays impair the ability of requesting carriers to self-provision single DS3 loops.") and paragraph 326 ("Furthermore, the other economic and operational barriers faced by competitive LECs in self-deploying loops generally, e.g., the inability to obtain reasonable and timely access to the customer's premises both in laying the fiber to the location and bringing it into a building thereafter, as well as convincing customers to accept the delays and uncertainty associated with deployment of alternative loop facilities exist with DS1 loop self-deployment.")

## I. Introduction

The incumbent local exchange carriers (“ILECs”), against whom competitive local exchange carriers (“CLECs”) seek to compete, have, with rare exception, already deployed the high capacity loop and transport facilities necessary to serve every multi-tenant or multiunit premises (“MTPs” or “MUPs”) requiring DS1 and higher level services in their regions. The ILECs typically enjoy access to these premises free of charge and indeed were welcomed by building owners and managers. In contrast, the Commission has already acknowledged the substantial evidence that competitors are often actually or effectively excluded from MTPs by building owners or managers.<sup>3</sup> The ILECs’ ubiquitous and free access to these premises is one the important vestiges of monopoly that gives them a tremendous economic advantage over new entrants and creates a significant barrier to facilities-based competitive entry.

Facilities-based CLECs suffer severe harm because of this discriminatory behavior by building owners. At the same time, ILECs are major beneficiaries. In a very real sense, building owners’ actions preserve the ILECs’ market power and prevent customers from gaining the benefits of competition.

The discriminatory and prohibitive MTP access practices experienced by SBPP members raise costs and impose significant inefficiencies on their attempts to create facilities-based competition – even in cases where it may otherwise be economic to construct alternative facilities. For example, delays in obtaining, or outright prohibition of, building access can seriously compromise competitors’ network efficiency by, for instance, forcing them to underutilize already deployed backbone facilities.

Difficulty in securing MTP access increases the complexity of competition to the point that facilities-based competitors are almost in a different (and virtually always more costly) business than the incumbents. Unlike the ILECs, CLECs that rely on connecting their own networks to customers’ premises need to coordinate and develop a significant organization just to secure landlords’ permission to allow building access. These organizations must either begin seeking access well before competitive facilities are deployed or must rush to obtain access when a customer expresses interest in purchasing competitive services, *e.g.*, by issuing a Request for Proposal, and sometimes even after a customer’s business is acquired. Either way, if a competitor confronts a recalcitrant landlord -- a situation that the ILECs virtually never incur -- significant problems are likely to arise. At best, entry is delayed; at worst, nothing gets built, and no services are

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<sup>3</sup> See *TRO*, paragraphs 303 (“The other barriers include the inability to obtain reasonable and timely access to the customer’s premises both in laying the fiber to the location and getting it into the building thereafter...”) and 305 and footnotes 624 (“Competitive carriers serving multiunit premises face deployment barriers that are not present when a competitive carrier seeks to deploy service to a customer located in a premises that such customer owns or controls.”), and 1041 (“...we recognize impairments related to multiunit premises access as one of a number of factors considered in crafting our unbundling rules for high-capacity loops...”). See also the Comments of the SBPP filed on March 8, 2002, In the Matter of the Promotion of Competitive Networks in Local Telecommunications Markets, WT Docket No. 99-217.

provided. And, of course, entry cannot occur unless the CLECs pay for building access – an expense the ILECs rarely incur. Unfortunately, all of these problems happen far too frequently, harming customer relationships, affecting good will, and putting CLECs at a competitive disadvantage to the ILECs.

Nor do the problems CLECs experience in gaining building access end after the carrier provides service to one tenant in the building. Often, building owners will grant a CLEC the right to serve one – but only one -- tenant. If the CLEC wishes to serve other tenants, it must engage in entirely new negotiations with the building owner, and each new negotiation begins again with all the attendant perils. And when an access agreement nears the end of its term, it must be renewed. In contrast, the ILECs do not face either of these situations.

## II. The *Triennial Review Order* Recognized MTP Access is a Barrier to Entry

In addressing impairment for loops in the *TRO*, the Commission found that “competitive carriers deploying loops also face difficulties in ...gaining building access from owners of multiunit premises.”<sup>4</sup> The Commission further concluded “that requesting carriers are impaired without access to unbundled subloops associated with accessing customer premises wiring at multiunit premises.”<sup>5</sup> That is, a competitive carrier faces barriers not only in entering a building but also in gaining access to the entire building. Because the Commission has correctly determined, based on extensive evidence, that lack of access to multiunit premises can pose insuperable barriers to a competitor’s ability to deploy loops, the SBPP considers it important to refresh the record on this subject, eliminating any doubt that these substantial problems continue to exist.

## III. Continuing Problems Faced by Facilities-Based CLECS in Seeking Access to MTPs

The attached declarations demonstrate that CLECs have recently experienced the following types of problems in seeking to build loops to serve tenants in MTPs. A few examples are included below to demonstrate the many different type of problems that competitors face regularly:

- In San Diego, California, XO sought to bring a wireless link to a small business customer by deploying a transceiver on the rooftop of the MTE where the customer was a tenant. The landlord representing the building owner insisted upon a recurring fee for access that was almost equivalent to the total revenue XO would have earned in providing the proposed service. XO was unsuccessful in getting this fee lowered and thereby lost the customer’s business.

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<sup>4</sup> *TRO*, Paragraph 205.

<sup>5</sup> *TRO*, Paragraph 347.

- In Atlanta, Georgia, XO's customer was a wireless provider located in a large MTE. The building owner permitted XO to use duct space to reach the customer but refused to allow it to serve any other tenant in the building.
- In Chicago, Illinois, XO was already serving a customer in a MTE over its own fiber. The customer asked XO to upgrade its facilities, which required negotiation with the building owner. These negotiations were highly contentious and lasted about one year. During this time, the customer was unable to receive the new capabilities it required.
- In Stamford, Connecticut, AT&T attempted to provide service to an additional tenant in a building where it already had deployed facilities. The building owner refused, sought to extract a high fee, slow-rolled the negotiations, and threatened to make AT&T remove its existing equipment. The building owner's approach can be summed up with his statement: "[W]e don't have to let you in the building, there are already service providers in place that the tenant can use." Even with the assistance of the regulator in Connecticut, AT&T has remained unable to provide service to the new customer, almost one year later.
- In New York City, AT&T could not provide service to a new customer while the building owner contemplated whether to sell the building. After waiting for four months, the new customer cancelled service.
- In New York City, MCI has experienced numerous problems. One landlord would not allow MCI to serve a tenant unless MCI agreed to give the building owner a percentage of its profits. Since MCI refused, that tenant is currently served over facilities leased from the ILEC at a cost of \$40,000/month. In another building where MCI has 162 active circuits, the property owner is seeking to increase the fee MCI pays for access to the building by over 500%. MCI refuses to pay, and the owner is attempting to evict it.
- In Northern Virginia, MCI wants to serve a customer in one of four buildings in a complex. The building owner has demanded that MCI provide service to all buildings as a condition for access to that single customer, even though one building is empty and one has no customers MCI is serving. MCI cannot economically serve the targeted customer with its own facilities in such an instance.
- In Seattle, Washington, MCI sought to deploy its own facilities in a building. The building owner, however, demanded that MCI use the Cable Distribution System the owner had deployed. The fee MCI would have to pay for using this system together with monthly cross-connect and other related fees would approach \$10,000/month. In contrast, the building owner does not require the ILEC to use its distribution network, and the ILEC pays no fee to serve customers in the building.

- In San Francisco, California, in March, 2003, MCI began negotiations to renew access arrangements for four buildings. Initially, the owner demanded for each building a \$10,000 "inducement" fee, a \$2,000 license fee, a \$75,000 letter of credit, and a telecom audit in each building. After six months of negotiations, the owner finally relented and reduced its fees to reasonable levels – but during the negotiations period the building owner refused to allow MCI to deploy new facilities, which resulted in MCI being unable to deploy and then losing several DS-3 and DS-1 orders.

#### IV. Conclusion

The Commission recognized in the *TRO* that CLECs face numerous economic and operational barriers in deploying high-capacity DS1 and DS3 loops to MTPs and found that CLECs are impaired in deploying these facilities up to the capacity level of two DS3s. One of the barriers the Commission deemed significant in its analysis was the problems that CLECs faced in obtaining reasonable, timely, and non-discriminatory access to MTEs. The evidence submitted herein demonstrates that CLECs continue to experience these problems, making high-capacity loop deployment more difficult and costly. This evidence also supports a conclusion that the appropriate geographic market for an impairment analysis for these loop facilities is location-specific.

Sincerely,



Thomas Cohen  
Coordinator

Attachments: Declaration of Wil Tirado on Behalf of XO Communications, Inc.  
Reply Declaration of Anthony Govannuci on Behalf of AT&T Corp.  
Declaration of Ben F. Wilson on Behalf of MCI, Inc.

cc: Scott Bergmann  
Matthew Brill  
Dan Gonzalez  
Christopher Libertelli  
Jessica Rosenworcel  
Russell Hanser  
Jeremy Miller  
Tom Navin  
Marcus Maher  
Christina Langlois  
Tim Stelzig  
Carol Simpson  
Gail Cohen  
Ian Dillner  
Cathy Zima

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Unbundled Access to Network Elements	)	WC Docket No. 04-313
	)	
Review of the Section 251 Unbundling	)	CC Docket No. 01-338
Obligations of Incumbent Local Exchange	)	
Carriers	)	

**DECLARATION OF WIL TIRADO  
ON BEHALF OF XO COMMUNICATIONS, INC.**

1.                   1. My name is Wil Tirado. I am employed by XO Communications, Inc. ("XO") as its Director of Technology & Architecture. My business address is 11111 Sunset Hills Road, Reston, VA 20190. My primary job responsibilities include providing overall direction for the evolution of XO's network from both a technical and financial capabilities perspective. In other words I specify what technology is deployed and how we allocate our capital funds to expand the XO network. In order to validate the benefit of given technologies I work with XO Real Estate and Operations personnel to understand physical limitations to their deployment such as access to buildings. Previously I was employed by Bell Atlantic, now part of Verizon, in a similar function.

2. XO is a facilities-based competitive local exchange carrier providing services to business customers. It generally serves those customers over high-capacity loop facilities (including at DS1, DS3, and OCn capacity levels), which are either deployed by itself or leased from incumbent providers. In most instances, these customers are located in multi-tenant environments (MTEs). In each instance where XO decides to deploy its own fiber loop to a

MTE, it must negotiate with the building owner over the terms of access, including the fee for use of space within the building and the limitations on such space. This is in contrast to the incumbent providers who in virtually every instance already have fiber loops to the building, often have wire in conduit within the building, and rarely pay the building owner for this right.

3. While XO is often successful in completing negotiations with the building owner, in far too many instances, problems occur. First of all, XO and the building owner may not reach resolution on the terms and conditions for entry in which case XO must inform the customer it cannot provide service. Second, the negotiations may drag on far too long. Here, the customer frequently gets frustrated and signs up with the incumbent provider. Third, XO may be permitted to enter but has to pay a very high fee, in some cases high enough that XO would make little or no money on that specific customer installation. Fourth, XO again may enter but is not allowed to serve all customers in the building.

4. Let me elaborate on each of these problems by reviewing some recent negotiations between XO and building owners or their representatives.

5. **San Diego.** XO's customer was a small business that required a wireless link which would be deployed from the XO wireless hub to the roof top of the customer's building. The landlord representing the building owner began the negotiations seeking a monthly fee for these rights that was almost equal to the revenue XO was going to get from the customer. With the customer revenue going almost entirely to offset the access fee payable to the landlord, there was essentially no business rationale for XO to deploy the wireless equipment with its associated

installation and maintenance costs. Over a 6 month period, XO's representative tried to get this fee lowered, but in the end was unsuccessful. Finally, XO lost the customer.

6. **Atlanta.** XO's customer was a wireless provider located in a large MTE. The building owner permitted XO to use duct space in the building to reach the customer but refused to allow it to serve any other tenant. While such an arrangement worked for this particular customer situation it deprived XO of the ability to leverage its investment in fiber construction and electronics over several customers. Additionally in the future serving other customers in the building will require more lengthy negotiations putting our ability to win the customer at risk. This situation also proves a very important and subtle point that having fiber optic facilities present in the building often does not guarantee the ability to serve any other customers in that building if at all.

7. **Boston/Minneapolis.** In both cities, XO also experienced dealings with building owners that resulted in XO only being allowed to serve a particular customer in the MTE and not the entire base of tenants.

8. **Chicago.** XO was already serving a customer over its own fiber in a large commercial building. The customer asked XO to upgrade the facilities and services, which required renegotiation with the building owner. These negotiations were very contentious and took about one year to complete. During this time, the customer was unable to receive the new capabilities it required.



9. In conclusion, XO continues to experience problems in accessing MTEs to serve tenants, which raises the cost of self-deploying facilities. Negotiations with landlords usually hinge on three points: 1) Rights to Access Tenants in Buildings – XO has often found these rights are not granted or are granted for only a single tenant (usually a tenant with significant size); 2) Speed of Negotiation – For XO, many negotiations last far too long to meet its commitment to provide service to the customer; and 3) Cost of Access – XO continues to experience situations where building owners seek unreasonable fees for providing access, making it uneconomical to provide service. As stated earlier, in all these instances, the incumbent faces no such barriers.

## **VERIFICATION**

I declare under penalty of perjury that the foregoing is true and correct.

November 18, 2004

/s/ Wil Tirado

Wil Tirado

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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Obligations of Incumbent Local Exchange	)	
Carriers	)	
	)	

**REPLY DECLARATION OF ANTHONY GIOVANNUCI  
ON BEHALF OF AT&T CORP.**

1. My name is Anthony J. Giovannuci. My business address is 207-209 F Street, South Boston, Massachusetts. I am a Director with AT&T Network Engineering and Operations, specifically overseeing AT&T's Media Engineering organization which is responsible for planning and deploying AT&T's transmission media, *e.g.*, fiber and microwave, nationally for both Local and Long Distance applications. In my current position, I am responsible, among other things, for a number of key areas of Outside Plant activity, including building rights-of-entry.

2. I have testimony in the *Triennial Review Proceeding* explaining the impairments that competitive carriers encounter in their attempts to deploy their own loop and transport facilities, including inside wire loops or subloops provisioned within multi-tenant environments (MTEs). I also provided a joint declaration with Anthony Fea in the comments round of this proceeding addressing, among other issues, the obstacles that competitors face in negotiating access to a particular MTEs – an obstacle that poses a continuing barrier to entry independent of the general “impairments” that also exist.

3. As I stated in my declaration submitted with AT&T's comments, building owners may preclude completely access to MTEs, or as is more commonly the case, may limit a competitor's access to a particular customer in the building (a fiber-to-the floor installation). The Commission correctly recognized the serious impediments of such limitations, and their impact on a competitor's ability to use self-provided loops to serve a customer. *Triennial Review Order* ¶ 305. Because of these limitations, even where building owners permit AT&T to deploy fiber-to-the floor, AT&T often is forced to purchase special access services from the ILEC to serve *other* customers in the building. Moreover, even if a competitive carrier has deployed facilities in one building, it may be impossible to deploy facilities to an adjacent building because the building owner may prohibit it from provisioning facilities within that building.

4. The purpose of this reply declaration is to provide the Commission with specific recent examples of obstacles that AT&T faces in its attempts to gain access to MTEs.

5. *Stamford, Connecticut.* Despite the existence of a non-discriminatory building access statute in the state of Connecticut, AT&T has spent nearly a year in trying to serve a new customer in an MTE. In November 2003, TCG, a wholly-owned subsidiary of AT&T, began its attempts to install telecommunications cable, fiber and equipment for a customer in an MTE. The only material that TCG needed to install outside of the customer's leased premises was fiber between the thirteenth floor (where TCG's customer is located) and the ninth floor, where the fiber would be spliced into existing TCG fiber already serving another tenant. The splicing would take place at a junction box to be installed in the utility closet on the ninth floor. Significantly, such

utility closets are used by all vendors to run fiber through the building, as needed. Utility closets are also typically used by tenants with space on multiple floors to route wiring between floors. In this MTE there are existing penetrations between floors in these closets, with ample space remaining for the TCG fiber required, and the installation would minimally impact any future use of these penetrations. It should also be noted that this fiber installation would not require the use of any of the building owner's common space.

6. Several months after TCG submitted its agreement to cover the installation of fiber between the two floors, the building owner communicated to TCG that it wanted the license agreement to also cover the pre-existing TCG facilities that are used to service another TCG customer in the building. It should be noted that for the previous installation, which was made nearly three (3) years ago, the building owner did not require such an agreement. Additionally, the building owner proposed the use of a different type of license agreement that contemplated the use of common space, notwithstanding the fact that TCG does not utilize common space to serve its existing customer, and would not require common space to serve its new customer. In proposing an arrangement for the use of common space, the building owner demanded that TCG pay a fee for the right to install fiber to serve its customers in the building. The building owner did not, however, specify the amount of the fee.

7. Even though TCG had no plans to use any common space in the building, in January 2004 TCG offered to pay the building owner \$300 a month, so that TCG could install the facilities and offer service promptly to its new customer. When the building owner refused the offer, TCG subsequently offered \$500 per month, again in an effort to

be able to promptly provide service to its new customer. In response to the offer, the building owner indicated that TCG's telecommunications facilities used to serve its existing customer in the building must first be *removed* before further negotiations regarding a right of entry to install fiber to serve the new customer could continue. When TCG made further attempts to discuss its desire to serve its new customer, the building owner, still demanding a higher per month fee, stated "we don't have to let you in the building, there are already service providers in place that the tenant can use."

8. When TCG stated that the customer should have the right to choose its provider, especially in light of the fact that TCG /AT&T was their provider of choice at all of their other facilities, the building owner replied that they will just have to "get along with the building's preferred providers." Even though TCG continued its attempts at negotiating access to serve this new customer, the building owner insisted that either TCG make a "better offer" (without ever suggesting what they considered an appropriate fee) or remove its previously installed telecommunications equipment. Even after the tenant sent a letter to the building owner requesting consent for TCG to bring fiber optic cable into its space, the building owner continued to threaten TCG that it would be necessary for TCG to remove all existing equipment and lines located within the building. During all of the negotiations that took place, the building owner continually refused to state what it considered to be a reasonable monthly fee, and *never* made a counter offer.

9. Recognizing that the building owner was not negotiating in good faith, TCG ultimately filed a petition before the Connecticut Department of Public Utility Control seeking to enforce the DPUC's building access regulations. TCG thereafter

agreed to have this matter heard by a DPUC mediator, and although an agreement for access to the building was reached at the mediation, the building owner has continued to delay in the execution of an access agreement setting forth the terms that were agreed upon at the mediation. As of this date -- almost one year later -- TCG is still unable to provide service to its new customer located within this building.

10. New York, New York. *In the City of New York, AT&T has recently experienced numerous obstacles in obtaining access to MTEs, including the following:*

- a. A building owner refused to discuss permitting AT&T building access while contemplating a sale of the building. After waiting over four months for AT&T to complete installation, the customer cancelled its service.
- b. A building owner's rent demands were so exorbitant that AT&T could not provide a financially viable service to the customer.
- c. A building owner outright refused to negotiate a right of entry into the building. AT&T was unable to serve the customer.
- d. After 14 months of delay tactics by the owner of another building, the customer finally cancelled AT&T's service.
- e. In another instance, a customer cancelled its order after unsuccessful and lengthy negotiation between AT&T and the building owner.

11. Connecticut and New York provide typical examples of the problems that AT&T encounters in accessing MTEs, either because the building owner (1) refuses outright to permit entry; (2) causes unreasonably delays permitting access to the building; or (3) charges excessive rent. In 2004 alone, for instance, there have been dozens of locations throughout the country in which landlords have refused to allow entry, or have

substantially delayed negotiations causing AT&T to lose its customer(s). AT&T's negotiations for access to a substantial number of buildings currently exceed 100 days, and at least one negotiation has continued for almost two years.

12. The result of these impairments to building entry is that AT&T loses substantial revenue, not only because customers *cannot* utilize AT&T's services in particular buildings where landlords may be uncooperative, but *will not* use AT&T in other buildings after such problems occur. Also, where the building owner insists on charging exorbitant fees, AT&T is often unable to provide a financially viable service to potential customers.



**VERIFICATION**

I declare under penalty of perjury that the foregoing is true and correct.

October 18, 2004.

/s/ Anthony J. Giovannuci  
Anthony J. Giovannuci

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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Review of the Section 251 Unbundling )  
Obligations of Incumbent Local Exchange )  
Carriers )  
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CC Docket No. 01-338

**REPLY DECLARATION OF BEN F. WILSON**  
**ON BEHALF OF MCI, INC.**

1. My name is Ben F. Wilson. My business address is 2655 Warrenville Road, Downers Grove, Illinois. I am a Manager in MCI's Corporate Facilities and Real Estate organization. I am responsible for negotiating license and lease agreements with building owners for the installation of the facilities MCI needs to serve its customers on its own network.

2. I have supported MCI's building access advocacy in the Commission's *UNE Triennial Review* and the *Competitive Networks Proceeding*. I have also supported the efforts of the Smart Buildings Policy Project in their attempts to ensure that competitive local exchange carriers have access to multi-tenant environments (MTEs) on reasonable and non-discriminatory terms and conditions.

3 Competitive local exchange carriers continue to experience difficulties in obtaining access to certain multi-unit buildings on the same terms and at the same rates as incumbent LECs. As monopoly providers, incumbent LECs enjoy important advantages over new entrants in obtaining access to and serving customers in multi-unit buildings. Among other advantages, the incumbents have obtained key building access rights that are costly for competitors to duplicate. Unlike incumbent LECs, competitive LECs are usually asked to pay unreasonable fees or high rents for access. Although the amount of compensation demanded varies from building to building, such access can cost thousands of dollars per month, usually over a five- or ten-year lease period. In addition, some landlords and building owners often demand a portion of competitors' gross revenues – averaging up to seven percent – as a condition for monthly access. Other owners require competitors to pay an additional fixed amount for monthly rent. Still others double and triple their fees at contract renewal. In contrast, incumbent LECs typically receive access to these multi-unit buildings – or have already obtained rights to access these buildings – without paying any rent at all. Thus, cost of entry is an issue that is indeed unique to competitive LECs, and is not an issue that an incumbent LEC would confront as well when it seeks to enter a new building or renew a contract.

4. Even when competitors can obtain access to a building using the incumbent LECs' facilities, they face additional delay and cost when attempting to migrate their customers to their own facilities. For example, in several cases, landlords and building owners have refused outright to permit MCI to lease space or establish its own point-of-presence (POP) in order to serve customers on its own network. On other occasions, landlords and building owners have demanded unreasonable fees and imposed

discriminatory terms and conditions on MCI for the establishment of its own POP or upon the renewal of an expired POP agreement. Again, no similar requirements are imposed on incumbent LECs. Thus, it is not so simple for a competing carrier to obtain access to a facility using the incumbent LECs facilities, and then migrate customers to its own facilities at a later date.

5. The purpose of this reply declaration is to provide the Commission with specific recent examples of the obstacles that MCI regularly faces in attempting to gain access to MTEs.

**Building Access Issues Relating to Unreasonable Fees and Conditions**

6. In the City of New York, MCI has faced numerous obstacles in attempting to gain access to MTEs. In some cases, the MTE owner or landlord has demanded a portion of MCI's gross revenues as a condition for MTE access. These demands, which have averaged anywhere from three to seven percent of gross revenues, has made serving customers in these buildings cost-prohibitive. One New York landlord refused to let MCI into a building to serve its customer unless MCI agreed to give the building owner a percentage of its profits. As a consequence, MCI must use the incumbent for local access, at a cost of \$40,000 per month. This landlord is demanding that MCI agree to a revenue sharing arrangement as a condition for access in two other New York City buildings as well.

7. Another New York City property owner demanded that MCI pay \$25,000 per year for access upon contract renewal. Currently, MCI pays about \$150 per month for access. MCI received an eviction notice from another New York City property owner after MCI refused to agree to a new agreement that requires MCI to pay \$900 per month

for building access, plus \$250 per month for each customer that MCI serves in the building. This manager has given MCI thirty (30) days to comply. MCI has 162 active circuits in the building.

8. The property manager of a New York building suddenly demanded that MCI either leave the building or agree to an up-front payment of ten years' rent and utilities. Further, this property manager refused to permit MCI to access its POP for installation and repairs until MCI agreed to pay \$2333 per month and a fee of \$50,000.

9. MCI sought access to a Northern Virginia building to provide service to one of its customers. However, as a condition for access, the landlord demanded that MCI agree to serve all four of the landlord's buildings – at an exorbitant cost. One of these buildings was empty; MCI was already providing service to a tenant in another building; and MCI did not need access to the other building. The landlord refused to negotiate a more reasonable fee, stating that this was an “all-or-nothing” deal. This same landlord demanded that MFS, one of MCI's subsidiaries, pay \$2,500 per month to install fiber within its customer's space. Again, the incumbent LEC is not subjected to these terms and conditions.

#### **Building Access Issues Relating to the Establishment of Points-of-Presence (POPs)**

10. The property owner of several buildings in Northern Virginia demanded that MCI pay a fee that is five times the national average to establish a local POP in the owner's buildings. In some of these buildings, MCI had already collocated its equipment within the building; however, due to the exorbitant fees demanded by the owner to establish a local POP, serving these customers became cost-prohibitive. In contrast, this property owner permits the incumbent LEC to establish its POPs at no charge.

11. MCI attempted to establish its own POP in a Seattle, Washington building, but was forced to abandon its plans in the face of the property owner's unreasonable demands. As a condition for access, the owner demanded that MCI use the Cable Distribution System that the landlord had established in the building – which the incumbent LEC is not required to use, as well as pay monthly cross-connect and other recurring and non-recurring fees on a per circuit basis. All told, MCI would have had to pay up to \$10,000 per month for access, whereas the incumbent LEC is permitted to serve its customers in the building at no charge.

12. MCI made several attempts to lease space in a Tampa, Florida building in order to establish a local POP. MCI intended to establish the POP so it could serve its customers off of its own network instead of the incumbent LEC's. Each time, the property manager refused to lease MCI the necessary space, even though space was available in the building. The manager stated that because MCI's customers were being served on the incumbent LEC's network, he could not be accused of denying them service.

13. MCI has been trying to lease space for a local POP in a Greenwich, Connecticut building for over 16 months in order to move its customers from the incumbent LEC's network to MCI's network. The landlord stated that MCI's space request was not in its master plan, and consequently denied MCI's request.

14. In March 2003, MCI began negotiations with the property owner of a San Francisco building for renewal of MCI's POPs in four of the owner's buildings. Initially, the owner demanded on a per building basis: a \$10,000 "inducement" fee; a \$2000/month license fee; a \$75,000 letter of credit; and a telecom audit in each building prior to each

circuit installment. After six months of discussions, MCI was able to get the manager to agree to more reasonable terms. However, during that six month period, MCI was not able to provision several DS-3 orders and lost several T1 orders as well.

15. In another New York building, MCI built a POP; however, the landlord refused to permit MCI to use an MFS riser to access its customer absent an amended agreement. MCI agreed to amend the agreement, but ceased negotiations upon the landlord's demand for double rent. MCI agreed to the rent increase, but had to wait eight months for the landlord to execute the amended agreement.

16. The denial of access to buildings on non-discriminatory terms and at reasonable rates severely restricts the ability of competitive LECs like MCI to expand their networks and effectively compete against incumbent LECs. Further, this denial of access compromises end-users' rights to access the local exchange carrier of their choice.

**VERIFICATION**

I declare under penalty of perjury that the foregoing is true and correct.

November 18, 2004

/s/ Ben F. Wilson  
Ben F. Wilson